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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
FURTHER NOTICE OF PROPOSED)
RULE MAKING)
)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

and


Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

To the Commission:

REPLY COMMENTS OF
RUSS MILLER RENTAL

Respectfully submitted,
William R. Miller
dba, Russ Miller Rental

By: 
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Date: March 1, 1995

I. INTRODUCTION

1. Russ Miller Rental is a small SMR operator in the Dallas/Fort Worth, Texas market. It operates nine 800 MHz channels in Fort Worth, five in Sherman, five in Bowie, five in Stephenville, one in Peoria and one in Mineral Wells, Texas. We have been in the two-way radio business since 1972 and the SMR business since 1984. We are members of AMTA, PCIA and SMR WON. Mr. Miller is a member of the Radio Club of America and is active in several industry trade association committees, including AMTA's Regulatory Committee/Forum, Small Business Operator's Council, and Strategic Planning Committee and PCIA's Specialized Mobile Radio Alliance.

II. GENERAL

2. Russ Miller Rental has reviewed the Comments filed in detail, and has met with industry trade associations and other SMR operators, both large and small, in an effort to address the issues covered by the FNPR. These meetings involved numerous trips to Washington and other meeting locations. As a result, we have a significant amount of resources invested in discussions regarding the FNPR and are obviously interested in the outcome.

III. SUMMARY

3. The SMR spectrum was designed and allocated as dispatch spectrum. In fact, telephone interconnect was prohibited on SMR for years. The prospective PCS providers as well as the current cellular providers both have spectrum which was conceived and expressly allocated for high capacity mobile telephony operations. After almost 20 years of licensing and operation on the 800 MHz band, to attempt to redesign

the SMR spectrum for high capacity cellular telephone type usage is not in the best interests of the majority of the SMR operators, and will cause most of the smaller operators like us major economic harm.

4. SMR has traditionally been a low cost "blue collar" service provider, whereas both cellular and PCS are higher cost "white collar" providers. There is nothing the Commission can do to re-allocate and auction frequencies to create a high capacity SMR mobile telephone system that can equal the low cost service provided by traditional SMRs, as by default the winners of any auctioned frequencies must pass their costs on to the consumer. In light of the foregoing, we believe that the SMR industry does not need rules which are "to the fullest extent possible, comparable to the rules governing competing CMRS providers. SMRs, although technically competitive to the other services, are still very different in that they operate on mature spectrum that is already heavily occupied by a very diverse group of licensees who utilize many different types of systems and technologies, and provide service to an entirely different class of consumer at a much lower cost than either cellular or PCS.

5. The current SMR industry is a mature industry in its present analog mode, with full utilization of spectrum throughout all urban areas of the country and heavy utilization in rural areas. The few operators who operate in the digital (ESMR) mode are not mature, but are at a critical embryonic phase of their development. These few ESMR operators would like to see the Commission tailor rules to fit their operating plans, regardless of the consequences suffered by the rest of the operators.

6. We are respectfully offering alternatives to the Commission's proposed rules which we feel will be more suitable to the industry as a whole and still allow successful operations by both digital ESMR and analog operators, as well as benefits to

the consumer. While our proposals may not be so broad and sweeping as the Commission's, and certainly not as captivating for Wall Street and the ESMR operators, we feel that our proposals are much more economically sound and will be more than adequate to allow the SMR industry (both local and wide-area, digital or analog) to progress naturally as technology allows and to continue to prosper in the future.

7. It is the small analog operators who have built the SMR industry, piece by piece, into what it is today. The consolidators have simply acquired many of the small operators and grouped the discrete systems into "super-systems". To change the rules to make contiguous spectrum available for the consolidators is not justified. Market forces, which have worked very well in allowing the consolidators to mass large quantities of channels in strategic areas, will continue to work to allow the consolidators to accomplish their objectives. Since some of the more important requirements and objectives of the consolidators are what amounts to a moving target, market forces may be the only method that can work.

IV. DISCUSSION

A. SPECULATION

8. To deter speculation, we propose that future eligibility for SMR spectrum be limited to existing SMR licensees who are operating constructed stations in the same area (within 35 miles of an existing station licensed to the same licensee). This eligibility limitation is very similar to policies governing the current SMR waiting lists, which give a preference to licensees expanding their systems, and the allocation of the cellular reserve band frequencies only to existing cellular licensees. It also closely follows the current rules for trunked SMR use of General Category and Industrial/Land Transportation

frequencies which can only be used for expansion of existing SMR systems where no SMR category frequencies are available. The geographic restrictions mirror those currently used to establish footprints for wide area filings. Given the limited number of 800 MHz. frequencies that are available anywhere in the country, all unassigned frequencies could be considered reserve band frequencies for expansion by modification of existing SMR systems and existing SMR footprints only. This policy would not prohibit any new entrants from obtaining SMR spectrum, as a new entrant would only need to acquire a constructed incumbent licensee to establish eligibility. Once eligible, a new entity would then be free to apply for additional spectrum. This would allow entry to wireline carriers and all other interested parties. These restrictions would only affect the small number of available frequencies left as the rest of the frequencies are already licensed. We propose no limit on the number of channels applied for, as long as all of the channels are part of the licensee's constructed adjacent footprint. We do propose a limit of 5 channels at a time, per location, not per area, if the frequencies applied for are not already licensed to the applicant within the licensee's existing footprint. The licensee would be eligible for additional channels as soon as all licensed frequencies were constructed and operational. We propose that this limit of 5 channels at a time apply to any of the SMR, General Category or inter-service shared frequencies. We foresee the above licensing process as a gradual process, as opposed to a filing window, with applications filed as needs dictate.

9. We can also support the two phase licensing process proposed by PCIA. In Phase 1, all applications would be considered modifications, and the number of applications filed during a one day filing window would be reduced substantially by the limitation of eligibility to incumbent licensees wishing to expand either the capacity of their existing systems or their existing footprint. As a result, negotiations followed by auctions could be used to resolve mutually exclusive and Phase 2 applications.

10. The rules and policies proposed above will work for existing wide area and local licensees. Both wide-area and local licensees will not be impeded from constructing or expanding their systems and both will be treated alike, with the same rights to relocate or expand their systems. If wide-area licensees feel that they need contiguous spectrum, they can either continue to acquire frequencies from other licensees or trade frequencies with other licensees in order to accomplish their goals.

11. Contiguous spectrum will not be needed for a number of years, as the systems that require contiguous spectrum to operate will be second generation systems which will replace the MIRS equipment currently being installed. Nextel's fear of a single licensee in any given area who may "hold out" and prevent the implementation of the spread spectrum technology in a given area is simply a business risk that Nextel or any other operator who desires to use technology which requires contiguous frequencies must assume

12. The existing 280 SMR channels, the 150 General Category channels, the 50 Business Category channels, the 50 Industrial/Land Transportation Category channels, and the 70 Public Safety Category channels should all retain their current allocation and inter-category sharing provisions as provided in 90.621(g). This will allow SMR systems to expand as needed, yet still provide some frequencies for those entities that require their own private systems. In most of the urban areas all of these frequencies are currently assigned and in use, mostly by SMRs. Many of these frequencies were originally assigned to eligibles other than SMRs. However, since use of these frequencies for expansion of SMR trunking systems has been allowed, there has been a change in the use of these frequencies from private conventional configurations to trunked SMR use. The application of trunking technology to these frequencies has resulted in much more efficient utilization of spectrum that previously had very little use, yet was encumbered. Needs for

private systems could be met by SMR operators who provide service to end users who would have previously been private system licensees.

13. The demise of the rules for system loading and 40 mile separation of unloaded systems reflect the maturity of the industry and are much more applicable to today's marketplace.

14. We also see a service void developing along the borders of MTAs as the MTA licensee will be required to control the signal level broadcast into the adjacent MTA, unless, of course, the same licensee is the winning bidder for both MTAs. This same service void now exists in the cellular service. In many areas along the border of a RSA and MSA the signal is weak and unreliable. In fact, depending upon propagation conditions at any given time, a cellular subscriber can end up on a system other than his "home" system and be required to pay roaming and long distance charges.

B. WIDE-AREA LICENSING

15. The Commission has proposed¹ that channels 401 - 600 be auctioned in four contiguous blocks of 50 channels for wide-area systems in MTA based service areas. We, along with many other commentators, believe that MTA based service areas are too large for effective economic operation of SMR systems. Most SMR station locations/footprints were chosen in response to consumer demand for service in a given consumer defined geographic area. Instead of the Commission's proposal for MTA sized areas, we propose that licensees continue to develop their own self-defined service areas, (through acquisition of others or by applying for additional channels where available) based upon the service requirements of their customers, and their own needs and marketing plans. This would result in no disruption to existing consumers and would allow service to be provided in a naturally occurring trading area, instead of an artificial

¹FNPR, ¶ 15-17

one. If the Commission should decide to license wide area systems based upon Commission-defined service areas, we would favor BEAs over MTAs or other type areas. We believe the clustered BEA concept around the larger urban areas is too large and does not support it.

16. We also propose that there be no designated channel blocks and subsequent auctions of those blocks. Instead, each SMR licensee would keep the discrete channels they are already licensed for on a site-by-site basis. Licensees would be free to continue to acquire additional channels from other operators, or trade channels among operators to obtain contiguous spectrum as is currently allowed in 90.645(g), but with no limit on the number of contiguous frequencies. The elimination of auctions would allow the smaller SMRs to not only continue to operate, but to expand somewhat using those channels that might be available.

17. In order to eliminate the burden of site specific licensing on both the Commission and the existing licensees of wide-area systems, the Commission could allow the use of fill-in type sites and relocation of existing sites within protected service areas² with simple notification to the Commission where the site is in the interior of the licensee's footprint for the frequencies involved or will not extend the licensee's 22 dBu contour of the existing station. In addition, we propose that the Commission allow SMRs who have established a contiguous footprint of contiguous or non-contiguous frequencies to apply for their own service area based licenses on those frequencies. This service area designation could be based upon whatever the licensee chooses to use such as counties, states, BTAs, MTAs, or any other readily identifiable area. We believe the continued consolidation of SMR systems will continue to the point where virtually all SMR systems on the upper channels will be owned by Nextel or its successor.

²FNPR, ¶ 40

C. LOCAL LICENSING

18. The Commission has proposed that the lower 80 SMR channels be licensed on a site-by site basis for local operators, that wide-area systems be allowed on these frequencies, and licensees allowed to trade channels among themselves to create contiguous frequencies where possible. We believe that dividing the channels into contiguous, non-contiguous, and local and wide area designations will create a lower or second class of licensee, as the lower frequencies will not retain their value, as will the upper frequencies. We also feel that the lower frequencies, by their very nature of being non-contiguous, will create a long term competitive disadvantage for the licensees on those frequencies. If the upper frequencies are contiguous, the equipment for those frequencies will be able to be produced more cheaply as it will not have to meet any emission mask requirements, except at the edges of the band, and adjacent channel rejection requirements for the receivers can be less stringent, as the same licensee will control the location of the adjacent channel transmitters.

19. As an alternative to site-specific local licensing the Commission requests comments regarding licensing BTA service areas for local licenses. We do not support the use of BTAs, BEAs or any other type of artificial area for local (or wide-area) licensing. We realize that area specific licensing poses less of an administrative burden on the Commission. However, while the Commission does need to be consider its resources when proposing new rules, the administrative burden of site specific licensing should not dictate that the Commission take the easy way out. The Commission's role is that of a public servant and it should be responsive to the needs of the public. The Commission has always (except for cellular) performed site specific licensing in the past and it has not been a burden until more and more licensing responsibilities were shifted to the Gettysburg

staff. The Commission's hiring freeze, the demise of the 30 year old licensing computer, and the influx of wide area and speculative license applications has resulted in the current backlog of SMR applications. We submit this is not the norm.

20. In order to ensure that its rules do not inadvertently allow MTA licensees to acquire large numbers of non-MTA channels primarily intended for local use, the Commission proposes a limit on the number of non-MTA channels that an applicant can obtain at one time in an area (defined as local licensing area such as BTA) without constructing and commencing operations, to 5 channels and requiring a 12 month construction period for local channels. We believe that this limitation is too restrictive as a 5 channel limit over a BTA sized area is too few for such a large area. This is nothing more than the 40 mile rule expanded. All of the channels in the urban areas are all already assigned and mostly controlled by the ESMR operators, whom would presumably be the MTA licensees. Only unassigned channels in rural areas would be affected by this restriction. We believe that this restriction would also limit the number of channels a local operator could obtain and would serve to limit the local operators.

21. If the Commission should decide to license systems based upon geographic areas with auctions, then individual licensees should be allowed to band together to bid on the area as a whole, but operate independently of each other. There should be no restrictions on the transfer of the resulting partial geographic area licenses.

D. MANDATORY MIGRATION

22. Incumbent licensees on the upper 200 channels that the FCC is proposing be licensed on a geographic basis should be protected on their existing frequencies, not forced to relocate to other channels, whether their expenses are paid for or not. Most incumbent licensees on the upper 200 channels are in rural areas where capacity is not an

issue. Those in the urban areas have already been acquired. The FCC should not be the savior of the potential block licensees by regulating incumbent licensees be relocated to other frequencies. If a consolidator wants these frequencies, than the consolidator should have to buy out the existing licensees or pay for them to relocate on a voluntary basis only. No one should be forced to relocate.

23. Most incumbent licensees have a large, installed customer base in place and relocation would harm the customers as much, if not more than the licensee, as the customer would be at the very least, inconvenienced, and would lose productive time as well as have to pay its own employees while "Re-tuning" is taking place. Most rural area customers are fundamentally different from those in urban areas. The rural area user generally travels over a much wider area, much more frequently than an urban customer. This is because there are fewer "one stop shopping" places in rural areas and the customers in those areas must constantly travel about in order to procure the goods and services that they ordinarily need on a daily basis. In addition, most rural area systems are heavily interconnected and the customers roam to other systems over the rural area in which they regularly travel. Coordinating the re-programming of these customers on multiple systems, some of which may require earlier re-tuning than others, would be most inconvenient to the customer and would require multiple re-programming events, per customer, in order to get all systems the customer uses re-programmed.

E. COMPETITIVE BIDDING

24. Along with other commentors we believe the Commission is exceeding its authority with respect to auctioning of the already heavily licensed SMR spectrum.³ We believe that Congress did not intend for already licensed spectrum to be auctioned, but to

³See comments of Erickson, CellCall, Dial Call, PCIA, AMTA, SMR Small Business Coalition, E.F. Johnson, SMR WON, Airwave, Anheuser-Busch, National Telephone Cooperative Assn., Parkinson, and many others.

the contrary, authorized the Commission to employ competitive bidding only with respect to initial licenses or construction permits.⁴ We do not believe auctions should be used to allocate spectrum to licensees in the SMR service. Auctions will increase the cost of service to consumers as the cost must be passed on. Auctions will also limit the participation of the small SMRs, even with incentives. Most small SMRs normally have to go to the bank to borrow money to construct a single channel. Banks will not loan money for which to bid for frequencies at auction and there is no other way for a small SMR to obtain the funds required, other than to give up control of his company.

⁴47 U.S.C. §309 (j) (1)